

The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNY M. JOHNSON, individually and on
behalf of a class of persons similarly
situated, and on behalf of the Providence
Health & Services 403(b) Value Plan, the
Providence Health & Services Multiple
Employer 401(k) Plan and the Providence
Health & Services 401(a) Service Plan,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES,
PROVIDENCE HEALTH & SERVICES
HUMAN RESOURCES COMMITTEE,
THE RETIREMENT PLANS
COMMITTEE, THE INVESTMENT
REVIEW COMMITTEE and JOHN AND
JANE DOES #1-25,

Defendants.

Case No. C17-1779 JCC

**[Proposed] JUDGMENT APPROVING
SETTLEMENT OF CLASS ACTION**

NOTE ON MOTION CALENDAR:
Tuesday, July 9, 2019

1 WHEREAS, Jenny M. Johnson (the “Plaintiff”) in the above-captioned lawsuit (the
 2 “Action”) on her own behalf and on behalf of the Settlement Class and the Plans, and Defendants
 3 Providence Health & Services and Providence Health & Services Human Resources Committee
 4 (the “Defendants”), have entered into a Class Action Settlement Agreement dated January 25,
 5 2019 (the “Settlement Agreement”), that provides for a complete dismissal with prejudice of all
 6 claims asserted in the Action against Defendants by Settlement Class Members on the terms and
 7 conditions set forth in the Settlement Agreement, subject to the approval of this Court (the
 8 “Settlement”);
 9

10 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall
 11 have the same meaning as they have in the Settlement Agreement;

12 WHEREAS, by Order dated February 22, 2019 (the “Preliminary Approval Order”), this
 13 Court (1) conditionally certified the Settlement Class and appointed Class Counsel; (2)
 14 preliminarily approved the Settlement; (3) directed notice to Settlement Class Members and
 15 approved the Plan of Allocation and form and manner of Notice; (4) appointed a Settlement
 16 Administrator; (5) scheduled a Fairness Hearing; and (6) scheduled a hearing on Class Counsel’s
 17 motion for Attorneys’ Fees and Expenses and the payment of a Case Contribution Award;
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19 WHEREAS, due and adequate notice has been given to the Settlement Class;

20 WHEREAS, the Court conducted a hearing on July 9, 2019 (the “Fairness Hearing”) to
 21 consider, among other things, (a) whether the proposed Settlement on the terms and conditions
 22 provided for in the Settlement Agreement is fair, reasonable, adequate and in the best interests of
 23 the Settlement Class and should be approved by the Court; (b) whether a Judgment substantially
 24 in the form attached as Exhibit A to the Settlement Agreement should be entered dismissing with
 25 prejudice all claims asserted in the Action against Defendants with respect to Settlement Class
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1 Members; (c) whether the proposed Plan of Allocation (attached as Exhibit C to the Settlement
2 Agreement) for the Distributable Settlement Amount is fair and reasonable and should be
3 approved; (d) whether the motion by Class Counsel for an award of attorneys' fees and
4 reimbursement of litigation expenses and for a Case Contribution Award should be approved;
5 and

6 WHEREAS, the Court having reviewed and considered the Settlement Agreement, all
7 papers filed and proceedings held herein in connection with the Settlement, all oral and written
8 comments received regarding the proposed Settlement, and the record in the Action, and good
9 cause appearing therefor;
10

11 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

12 1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action,
13 and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties
14 and each of the Settlement Class Members.

15 2. **Incorporation of Settlement Documents:** This Judgment incorporates and
16 makes a part hereof: (a) the Settlement Agreement filed with the Court on January 25, 2019,
17 including the Plan of Allocation submitted therewith; and (b) the Notice approved by the Court
18 on February 22, 2019.

19 3. **Class Certification for Settlement Purposes:** The Court hereby affirms its
20 determinations in the Preliminary Approval Order certifying, solely for the purposes of
21 effectuating the proposed Settlement on a non-opt-out basis, the Action as a class action pursuant
22 to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure with the following Settlement
23 Class: All Current and Former Participants in the Providence Health & Services 401(a) Service
24 Plan (the "401(a) Plan"), the Providence Health & Services Multiple Employer 401(k) Plan (the
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1 “401(k) Plan”), the Providence Health & Services 403(b) Value Plan (the “403(b) Plan”), or in
 2 any plan merged into the 401(a), 401(k) or 403(b) Plans, or in any successor plan into which
 3 401(a), 401(k) or 403(b) Plans may be merged (collectively, the “Plans”), who maintained a
 4 balance of any amount in the Plans from November 28, 2011 to the date of entry of the
 5 Preliminary Approval Order.

6 4. **Adequacy of Representation:** Pursuant to Rule 23 of the Federal Rules of Civil
 7 Procedure, and for the purposes of Settlement only, the Court hereby affirms its determinations
 8 in the Preliminary Approval Order certifying Plaintiff as Class Representative for the Settlement
 9 Class and appointing Plaintiff’s Counsel as Class Counsel for the Settlement Class and finding
 10 that the Settlement has satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4)
 11 and 23(g).
 12

13 5. **Notice:** The Court finds that the dissemination of the Notice: (i) was
 14 implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice
 15 reasonably practicable under the circumstances; (iii) constituted notice that was reasonably
 16 calculated, under the circumstances, to apprise all Settlement Class Members of the pendency of
 17 the Action, of the effect of the Settlement (including the releases provided for therein), of Class
 18 Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses and a
 19 Case Contribution Award, of their right to object to the Settlement, the Plan of Allocation and
 20 Class Counsel’s motion for attorneys’ fee and reimbursement of litigation expenses, and of their
 21 right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all
 22 persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the
 23 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution
 24 including the Due Process Clause, and all other applicable law and rules.
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6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects including, without limitation, the amount of the Settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted in the Action against Defendants by Settlement Class Members, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiff and the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Agreement.

7. As of the Effective Date, pursuant to Fed. R. Civ. P. 54(b), all of the claims asserted in this Action against Defendants by Plaintiff and Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

8. **Binding Effect:** The terms of the Settlement Agreement and of this Judgment shall be forever binding on Defendants, Plaintiff and all Settlement Class Members, as well as their respective heirs, executors, administrators, predecessors, successors and assigns.

9. **Releases:** The releases set forth in Section V of the Settlement Agreement (the “Releases”), together with the definitions contained in Paragraphs 1.12, 1.32 and 1.42 of the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, the Court orders that, as of the Effective Date:

a) The Plaintiff, each Settlement Class Member (on behalf of themselves, their current and former beneficiaries, their representatives and successors-in-interest), and the

Plans (by and through the Independent Fiduciary), shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice all Released Claims, including all Unknown Claims, against Defendants and Defendant Released Parties, and shall forever be enjoined from prosecuting any or all of the Released Claims, including any or all Unknown Claims, against Defendants and Defendant Released Parties, as more fully set forth in the Settlement Agreement; and

b) The Company (on behalf of itself and its representatives and successors-in-interest) shall be deemed to have, and by operation of law and of this Judgment shall have fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of Plaintiff, the Plans, the Settlement Class, and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether under local, state or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, in connection with the Action, as more fully set forth in the Settlement Agreement.

10. **Rule 11 Findings:** The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the claims asserted in the Action against Defendants by Settlement Class Members.

11. **No Admissions:** This Judgment, the Preliminary Approval Order, the Settlement Agreement (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), materials submitted in support of the Plan of Allocation, and the negotiations that led to the agreement in principle reached on or about October 30, 2018, the negotiation of the Settlement Agreement and its exhibits, and any papers submitted in support of approval of the Settlement, and any proceedings taken pursuant to or in connection with the Settlement Agreement or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall not be offered against any of the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that was, could have been, or may be asserted or the deficiency of any defense that has been, could have been, or may be asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Defendants; (b) shall not be offered against Plaintiff as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against Plaintiff in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, the Parties and their respective counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement; (c) shall not be construed against any of the Parties as an admission, concession, or presumption that the Settlement Amount represents the amount which could be or would have been recovered by the Settlement Class

1 after trial with respect to their claims in the Action; (d) shall not be construed against the
 2 Plaintiff or any other plaintiff party that any of the claims asserted or to be asserted in the Action
 3 are without merit, that any of the Defendants have or had meritorious defenses, or that damages
 4 recoverable by the Settlement Class would not have exceeded the Settlement Amount.

5 12. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any
 6 way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of
 7 the administration, interpretation, implementation and enforcement of the Settlement; (b) the
 8 disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and litigation
 9 expenses by Class Counsel in the Action that will be paid from the Settlement Fund; (d) any
 10 motion to approve the Plan of Allocation; and (e) the Settlement Class Members for all matters
 11 relating to the Action.
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13 13. A separate order shall be entered on the motion of Plaintiff's Counsel for an
 14 award of attorneys' fees and reimbursement of litigation expenses and a Case Contribution
 15 Award. Such order shall in no way affect or delay the finality of this Judgment and shall not
 16 affect or delay the Effective Date of the Settlement.
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18 14. **Modification of Settlement Agreement:** Without further approval from the
 19 Court, Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or
 20 modifications of the Settlement Agreement or any exhibits attached thereto to effectuate this
 21 Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially
 22 limit the rights of Settlement Class Members in connection with the Settlement. Without further
 23 order of the Court, Plaintiff and Defendants may agree to reasonable extensions of time to carry
 24 out any provisions of the Settlement.
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1 15. **Termination:** If the Settlement does not go into effect or is terminated as
2 provided in the Settlement Agreement, then this Judgment (and any orders of the Court relating
3 to the Settlement) shall be vacated, rendered null and void and be of no further force or effect,
4 except as otherwise provided by the Settlement Agreement.

5 16. **Entry of Final Judgment:** There is no just reason to delay entry of this
6 Judgment as a final judgment with respect to the claims asserted in the Action against
7 Defendants by Settlement Class Members. Accordingly, the Clerk of the Court is expressly
8 directed to immediately enter this final judgment pursuant to Fed. R. Civ. P. 54(b) as against
9 Defendants.
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11
12 SO ORDERED this ____ day of _____, 2019.

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14 _____
15 THE HON. JOHN C. COUGHENOUR
16 UNITED STATES DISTRICT JUDGE

17 Presented by:

18 By: /s/ Cliff Cantor
19 Cliff Cantor, WSBA # 17893
20 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
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Certificate of Service

I certify that, on the date stamped above, I caused this document to be filed with the Clerk of the Court using the CM/ECF system, which will cause notification of filing to be emailed to counsel of record for all parties.

s/ Cliff Cantor, WSBA # 17893